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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

LUANNE NIERENHAUSEN, Plaintiff and Respondent, v. THE MAY DEPARTMENT STORES COMPANY, Defendant and Appellant.	B191105 (Los Angeles County Super. Ct. No. VC042764)

APPEAL from a judgment of the Superior Court of Los Angeles County. Chris R. Conway, Judge. Affirmed.

Federated Retail Holdings, Inc., Legal Department, Michelle Mitchell-Bromfman; Ropers, Majeski, Kohn & Bentley, Shirley D. Deutsch for Defendant and Appellant.

Law Offices of Ching & Associates, Ernest F. Ching, Jr., Yameen Salahuddin for Plaintiff and Respondent.

This is a breach of contract case. Defendant The May Department Stores Company (hereinafter, May Co.) appeals from a judgment awarding liquidated damages of $10,000, plus attorney fees and costs, to plaintiff Luanne Nierenhausen for May Co.'s breach of the terms of a settlement agreement resolving her claim of wrongful termination. May Co. issued an Internal Revenue Service (IRS) Form 1099 to Nierenhausen's law firm, as required by the terms of the settlement agreement. But by also issuing a Form 1099 to Nierenhausen personally, reflecting the same payment made to her law firm, May Co. breached the settlement agreement.

May Co. contends, in essence, as follows: (1) it was required by law to issue a Form 1099 directly to Nierenhausen; (2) it did not breach the terms of the agreement because nothing in the agreement specifically prohibited it from issuing a Form 1099 to Nierenhausen; and (3) any interpretation that it breached the agreement by complying with tax laws contravenes public policy. We find May Co.'s contentions unavailing, because the plain terms of the agreement and federal law at the time only required one Form 1099, and agreeing to issue the Form 1099 to counsel was appropriate at the time of the settlement agreement when the issue of tax liability for attorney fees in personal injury matters was not yet resolved by the United States Supreme Court.

FACTUAL AND PROCEDURAL SUMMARY

After May Co. terminated Nierenhausen's employment in August of 2002, she sued, alleging wrongful termination, defamation, infliction of emotional distress, and related causes of action. The parties pursued mediation and then entered into a written settlement agreement in July of 2003.

Pursuant to the terms of the settlement agreement, May Co. agreed to deliver to Nierenhausen's counsel a check "payable to" the law firm of Ching & Associates in "the sum of $27,500 [which] represents emotional distress damages and will be subject to *a 1099*." (Italics added.) The agreement further specified: "Nierenhausen and her counsel are advised and aware that *her counsel will receive a 1099* for the emotional distress damages check at the end of tax year, 2003. In addition, [May Co.] will reimburse Nierenhausen's share of the mediation fee of $2,538 . . . ." (Italics added.)

In the agreement, Nierenhausen also acknowledged that May Co. made no representation to her regarding the tax consequences of any amounts received in the settlement, and she agreed to pay any federal and states taxes incurred as a result of the settlement. Nierenhausen further agreed "to indemnify and hold [May Co.] harmless" for any tax liability incurred by it as a result of the agreement.

In August of 2003, May Co. issued one check payable to Ching & Associates for $27,500 (deposited in the firm's trust account) and another check payable to Nierenhausen for $2,538. In January of 2004, May Co. sent out a Form 1099 to the "Law Offices of Ching & Assoc." in the amount of $27,500 designated as "gross proceeds paid to an attorney." However, May Co. also sent a second Form 1099 to Nierenhausen in the amount of $30,038 (reflecting the total of the two checks paid) designated as "other income." The second Form 1099 referenced Nierenhausen as the "recipient" of the $30,038, and it was sent to her at her residence in the state of Connecticut.

In February of 2004, counsel for Nierenhausen contacted counsel for May Co., pointed out that the settlement agreement required that "her counsel" (not Nierenhausen) receive a Form 1099 for the emotional distress damages check at the end of the year 2003, and requested that May Co. correct the error and resubmit the Form 1099. May Co. declined to amend the Form 1099 to reflect Nierenhausen's receipt of only the $2,538 for mediation expense reimbursement.

In July of 2004, Nierenhausen then filed the present action for breach of contract based on May Co.'s issuance of two Form 1099's, one to Nierenhausen and one to her counsel. The suit sought damages in the amount of $10,000, reflecting the liquidated damages amount specified in the parties' contract. Nierenhausen asserted the damages suffered as a result of the breach of contract were "excessive tax liabilities on the settlement amount."

At the time Nierenhausen filed the action for breach of contract in 2004, courts were divided as to the proper tax treatment of attorney fees paid to plaintiff's counsel under a contingent fee agreement. Some federal circuit courts held that the contingent fee portion of litigation recovery is not included in the plaintiff's gross income; other

courts (such as the Ninth Circuit) held that the fee portion of the recovery is excluded from gross income if state law gives the plaintiff's attorney a special property interest in the fee; and other courts held that the fee portion of the recovery is always income to the plaintiff, regardless of the nuances of state law. (See *Commissioner v. Banks* (2005) 543 U.S. 426, 429-430 [acknowledging the split among lower courts, and holding that when a litigant's recovery constitutes taxable income, such income includes that portion of the recovery paid to the litigant's attorney as a contingent fee].)[1]

In August of 2004, May Co. removed the breach of contract case to the federal district court, claiming the matter involved a federal question (28 U.S.C. § 1331) and implicated the federal anti-injunction act in that it restrained the collection of a tax (26 U.S.C. § 7421(a)). In December of 2004, the federal district court found no basis for federal jurisdiction and remanded the matter to the Los Angeles Superior Court, noting that the case "merely asserts a state law claim for breach of contract." The court observed that the agreement between the parties "specifically considered how the tax issues were to be handled and determined that a single IRS Form 1099 would be issued. From the parties' papers it appears that [May Co.] breached the literal terms of this agreement."

The matter then returned to state court, where May Co. moved for summary judgment. In denying the motion for summary judgment, the court observed that

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[1] We note that May Co. asserts that awards of attorney fees in employment cases were always deemed taxable as income in California, citing *Biehl v. C.I.R.* (9th Cir. 2003) 351 F.3d 982 (opinion filed in December 2003 and holding that attorney fees, paid pursuant to a settlement agreement with a former employer, did not satisfy the business connection requirement for payment to be deductible from adjusted gross income, and must be treated as a miscellaneous itemized deduction). Even if attorney fees were deemed taxable income in California at the time of the July 2003 settlement agreement, May Co. has cited no authority for the assumption that this issue would have been litigated in California by Nierenhausen, to whom May Co. issued the Form 1099 as a resident of the state of Connecticut.

contrary to May Co.'s assertion, because the settlement specifically considered how to handle tax matters, there was a triable issue of fact as to the element of damages. "The element of damages is not the tax liability itself . . . but rather the acceptance of a lesser amount in settlement, based on the understanding that the payment would be reported to the IRS in a particular manner." The court also noted that there was a dispute over whether it was correct to prepare two Form 1099's, since Nierenhausen presented opinion evidence from a CPA that May Co. needed only report payment to the payee (i.e., the law firm) and that the issuance of two Form 1099's reflecting the same payment creates a problem when the ultimate payee (i.e., Nierenhausen) reports the income to the IRS. In view of such triable issues of mixed law and fact, the court denied summary judgment.

In January of 2006, a one-day bench trial ensued. The court heard testimony from expert witnesses Donald Berkheimer, a CPA called by Nierenhausen, and Robert Wood, a tax attorney called by May Co., and reviewed various documents admitted into evidence.

In its statement of decision in favor of Nierenhausen, the trial court recounted the relevant terms of the settlement agreement and the details of the two Form 1099's issued by May Co. The court found, in pertinent part, as follows: "[May Co.] breached the settlement agreement in submitting the second form 1099 showing payment of the sum of $27,500 directly to [Nierenhausen]. At the time of the execution of the settlement agreement, the law was unsettled as to how settlements of this kind were to be treated by the recipient, that is whether the entire amount was subject to inclusion on the recipient's federal and state tax returns, or whether only the net amount (the gross amount less attorney's fees and court costs) was reportable. The evidence was clear that [Nierenhausen] was aware of the state of the law and wanted an opportunity to fully examine the issue as to how she had to report the $27,500 and this constituted one of the major reasons for her agreeing to accept the settlement and execute the appropriate documents. . . . The clear interpretation of the settlement agreement was that only one form 1099 would be submitted to the Internal Revenue Service showing payment of $27,500 to the trust account of the Law Offices of Ching & Associates. [May Co.]

breached this provision when they submitted a second form 1099 showing payment of that sum directly to [Nierenhausen]. This was in direct contradiction of the terms and conditions of the settlement agreement."

Regarding damages from the breach of contract, the trial court stated: "While one might argue that as a result of this breach, [Nierenhausen] did not suffer any damages since she had to ultimately report the full amount of the settlement on her income tax returns, pursuant to a decision of the United States Supreme Court issued in 2005, that does not excuse [May Co.'s] breach. [Nierenhausen] was still deprived of the benefit of the bargain she made with [May Co.], that is the opportunity to fully explore how the settlement amount was to be treated for income tax purposes."

The trial court awarded Nierenhausen $10,000, pursuant to the liquidated damages provision in the settlement agreement, and $20,556 in attorney fees and costs.

DISCUSSION

I. Overview of applicable tax law.

The Internal Revenue Code (IRC) defines reportable gross income as "all income from whatever source derived," except as excluded by other statutory provisions. (26 U.S.C. § 61(a).) One such statutory exclusion is for "the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness." (26 U.S.C.§ 104(a)(2).) Only damages for physical injuries or sickness, and not for emotional distress, are excluded from the definition of income. (*Rivera v. Baker West, Inc.* (9th Cir. 2005) 430 F.3d 1253, 1256.) Thus, Nierenhausen's recovery of damages for emotional distress was part of her taxable gross income. And, Nierenhausen's obligation to report income as taxable gross income is independent of whether or not any Form 1099 is issued. (See *Halle v. Commissioner of Internal Revenue* (2d Cir. 1949) 175 F.2d 500, 502 [holding that federal income tax system is one of self-assessment by the taxpayer]; 26 U.S.C. §§ 61(a) [definition of gross income], 6001 [requiring persons liable for tax imposed to keep records and make returns], 6012 [requiring persons liable for tax imposed to make returns of income].)

Nonetheless, whether Nierenhausen's taxable gross income included that portion of the recovery paid to her attorney as a contingent fee, is an issue that was not resolved until long after the settlement agreement. In fact, not until the Supreme Court's opinion in *Commissioner v. Banks, supra,* 543 U.S. 426, in January of 2005--a year after May Co. sent out the Form 1099's in question--was the law settled. (*Id.* at pp. 429-430 [acknowledging the split among lower courts, and holding that when a litigant's recovery constitutes taxable income, such income includes that portion of the recovery paid to the litigant's attorney as a contingent fee].)

The purpose of the Form 1099 information return is clear. The IRC requirement (26 U.S.C. § 6041) that those engaged in a trade or business and making certain types of payments must file information returns (e.g., Form 1099) is intended to help the government locate and check upon recipients of income and the amounts they receive. (*United States v. Haimowitz* (2d Cir. 1968) 404 F.2d 38, 40.) However, the issuance of a Form 1099 does not necessarily reflect tax liability, as that determination is made by the IRS. (See *Ward v. American Fam. Life Assur. Co. of Columbus* (D.S.C. 2006) 444 F.Supp.2d 540, 544, fn. 6 (*Ward v. AFLAC*.) Although the burden shifts from the taxpayer to the IRS when a taxpayer asserts a reasonable dispute regarding income reported on a Form 1099 filed by a third party and seeks to have it amended (*ibid.*; see 26 U.S.C. § 6201(d)), ultimately the "taxpayer seeking to exclude money damages from income bears the burden of proving that the exclusion applies." (*Rivera v. Baker West, Inc., supra,* 430 F.3d at p. 1256.)

It thus appears that the provision in the settlement agreement under review, requiring that May Co. issue the Form 1099 to Nierenhausen's law firm, rather than to her, would have facilitated her ability to declare only the net recovery from the settlement agreement as part of her gross income, and thus to exclude from gross income that portion of the recovery that constituted the law firm's contingent fee. As previously noted, at the time of the settlement agreement, it was unresolved whether taxable gross income included that portion of the monetary settlement constituting the law firm's

contingent fee. Also, as a practical matter, Nierenhausen's law firm was the only entity with the ability to apportion the amounts due for attorney fees and costs.

II. At the time of the settlement agreement and the issuance of the two Form 1099's, May Co. was only required by law to issue one. It was not required by law to issue two Form 1099's, one to Nierenhausen's law firm and a second to Nierenhausen personally.

May Co. attempts to characterize Nierenhausen's breach of contract claim as an effort to avoid federal tax liability. According to May Co., if it had not reported her as "the true recipient of the settlement funds, it would have enabled Nierenhausen to evade her tax liability." However, the relevant issue between the parties is not Nierenhausen's relationship with the IRS. Rather, it is the alleged breach of the settlement agreement, which *during the taxable year in question* required only a Form 1099 for Nierenhausen's law firm and did not require one for Nierenhausen.

May Co. insists that its issuance of the Form 1099 to Nierenhausen was not a discretionary act, but instead was mandated by the IRC. May Co. asserts, without citation to any direct case authority, that the amount paid pursuant to a settlement agreement "clearly fall[s] within the parameters" of 26 United States Code section 6041(a),[2] which required filing information returns on amounts over $600 paid to individuals, except payments for personal injury damages. (See 26 U.S.C. § 104(a)(2).)

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[2] Title 26 of the United States Code section 6041(a) provides as follows: "All persons engaged in a trade or business and making payment in the course of such trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income . . . of $600 or more in any taxable year . . . shall render *a true and accurate return* to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and *the name and address of the recipient of such payment*." (Italics added.)

May Co. describes its payment pursuant to the settlement agreement with Nierenhausen as a "payment in the course of . . . [the] trade or business" it is engaged in, within the meaning of section 6014(a). May Co. further asserts that during the 2003 taxable year in question *payment to a former employee's attorney* of emotional distress damages due to wrongful termination fell within one of the required statutory categories of "rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, [or] income." (§ 6014(a), italics added.)

May Co. characterizes Nierenhausen's attorney as merely a middleman for Nierenhausen, who was obviously the beneficiary of the bulk of the funds after the law firm retained that portion of the funds constituting the fee for its services. Thus, May Co. asserts that if it had not issued a Form 1099 to Nierenhausen, as well as to her law firm, it would not have complied with the requirement of a true and accurate reporting and could have exposed itself to various penalties. (See 26 U.S.C. §§ 6721(a)(2), 7201, 7203.) However, the only *then existing* legal requirement for reporting information regarding funds sent to an attorney in the course of litigation was as to the issuance of a Form 1099 *to the attorney* (26 U.S.C. § 6045(f)(2)), which May Co. complied with in the present case. Indeed, the Form 1099 issued to Nierenhausen's law firm accurately characterized the amount as "gross proceeds paid to an attorney."[3]

In its effort to justify also sending a Form 1099 to Nierenhausen, May Co. relies on the then existing version of the relevant the Treasury Regulations, title 26 of the Code of Federal Regulations part 1.6041-1, which interpreted title 26 of the United States Code section 6041. May Co. cites two examples, described in that regulation, where payment

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3 Ironically, it is arguable whether the Form 1099 issued by May Co. to Nierenhausen was accurate, since it showed her as the "recipient" of $30,038 and did not reflect the lower net amount actually received after the law firm subtracted its attorney fees.

is made on behalf of another person. The first example is that of a bank which finances a real estate developer, where the bank makes disbursements to various contractors for a construction project. The bank has "management or oversight functions in connection with the payments" and thus is "subject to the information reporting requirements of section 6041 with respect to payments." (26 C.F.R. § 1.6041-1(e)(5), example 1.) The second example is that of a mortgage company which holds a mortgage on a business property, where the property is damaged and the owner of the property receives an insurance check payable to both the mortgage company and the owner. Where the mortgage company holds the insurance proceeds in an escrow account and makes disbursements to contractors for repairs to the property, the mortgage company has a significant economic interest in the repairs because of its equity interest in the property, and it is thus "subject to the information reporting requirements of section 6041 with respect to the payments to contractors." (26 C.F.R. § 1.6041-1(e)(5), example 2.)

Neither of the above examples discussed in the Treasury Regulations contains any rationale applicable to the present case. May Co. obviously had no management or oversight function in connection with its payment for emotional distress damages to Nierenhausen. May Co. merely wrote the check. Nor did May Co. have any economic interest in how Nierenhausen spent or invested the money.

Equally unavailing is May Co.'s reliance on recently issued Treasury Regulations regarding payments to attorneys on behalf of a client. The current version of the regulation addressed by the parties at trial (26 C.F.R. § 1.6041-1) includes a new subpart, not in existence at the time of the events under consideration in the present case. That new provision (26 C.F.R. § 1.6041-1(a)(1)(iii), eff. Jul. 13, 2006) specifically mandates as a new reporting requirement that one who pays money to an attorney on behalf of the attorney's client must file an information return (e.g., a Form 1099) as to *both* the

attorney and the attorney's client--but only as to "payments made on or after January 1, 2007."[4]

It is thus apparent that if May Co. had filed only one Form 1099 for the money paid to Nierenhausen's law firm (and no Form 1099 as to Nierenhausen) for the 2003 taxable year, May Co. would not have evaded its reporting obligations under then existing federal tax law. And, it would have complied with, and not breached, the settlement agreement.

This legal conclusion is also consistent with the evidence adduced at trial from Nierenhausen's expert witness, Donald Berkheimer, a CPA and college professor. According to Berkheimer, May Co. could properly have fulfilled its legal obligation to report the settlement payment by simply issuing one Form 1099 to Nierenhausen's counsel. This method of reporting was legal and accurate because at the time of the settlement agreement, the law was unsettled regarding whether a litigant's income was to include the portion of the recovery paid to the attorney as a contingent fee.

Although May Co.'s expert witness, tax attorney Robert Wood, opined that the law (i.e., 26 U.S.C. § 6041(a), and relevant Treasury Regulations) required May Co. to

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[4] Title 26 of the Code of Federal Regulations part 1.6041-1 (a)(1)(iii), effective July 13, 2006, provides as follows: "Information returns required under section 6045(f) on or after January 1, 2007. *For payments made on or after January 1, 2007* to which section 6045(f) (relating to payments to attorneys) applies, the following rules apply. Not withstanding the provisions of paragraph (a)(1)(ii) of this section, payments to an attorney that are described in paragraph (a)(1)(i) of this section but which otherwise would be reportable under section 6045(f) are reported under section 6041 and this section and not section 6045(f). This exception applies only if the payments are reportable with respect to the same payee under both sections. *Thus, a person who, in the course of a trade or business, pays $600 of taxable damages to a claimant by paying that amount to the claimant's attorney is required to file an information return under section 6041 with respect to the claimant*, as well as another information return under section 6045(f) with respect to the claimant's attorney. For provisions relating to information reporting for payments to attorneys, see § 1.6045-5." (Italics added.)

issue both Form 1099's, Berkheimer testified to the contrary. According to Berkheimer, although no provision in the tax code prohibited issuing a Form 1099 to Nierenhausen as well as to her law firm, no provision in the tax code would have been violated by issuing a Form 1099 only to Nierenhausen's law firm.

Moreover, May Co.'s reliance on case law to reach a contrary conclusion is unavailing. In *Dusé v. International Business Machines Corp.* (2d Cir. 2001) 252 F.3d 151 (*Dusé*), for example, the plaintiff alleged breach of contract, among other claims, because his former employer filed a Form 1099 with the IRS for the amount of the settlement agreement, which specified that the award of essentially back pay for an employment discrimination claim did not constitute wages, but rather was compensation for personal injuries, emotional distress, and pain and suffering--and that the compensation purportedly was not subject to withholding taxes. The defendant wrote one check payable to Dusé and his attorneys as payees, and then filed one Form 1099 designating as miscellaneous income the amount paid to Dusé and his attorneys. Meanwhile, Dusé had filed tax returns which did not refer to the settlement payment from defendant. (*Id.* at pp. 153-154.)

The court in *Dusé* simply held that the defendant did not breach the confidentiality portion of the settlement agreement requiring it not to disclose to any person or entity the amount of the defendant's payment, except to the extent defendant was required to do so by law or business necessity. (*Id.* at p. 158.) The court reasoned that since the bulk of Dusé's claims may have fallen outside the statutory exclusion from gross income and because the payees included his attorneys, defendant "may well" have been required by law to file a Form 1099 reporting the amount. (*Id.* at pp. 161-162.)

In contrast to the situation in *Dusé*, here, Nierenhausen does not complain about reporting of the settlement agreement in breach of a confidentiality clause. She complains only about the filing of *two* Form 1099's, which was not at the time required by law. Similarly distinguishable are other cases involving the alleged violation of a settlement agreement by the issuance of a Form 1099. For example, in *Prudential Securities, Inc. v. Haugland* (Tex. App.--El Paso 1998) 973 S.W.2d 394 (*Haugland*),

where a securities firm reported payments and forgiveness of debt as income on a Form 1099, causation was not established between an alleged breach of the confidentiality provision in a settlement agreement and damages (i.e., the subsequently assessed tax liability). Unlike in *Haugland*, here, May Co. does not contend on appeal there is any lack of causation regarding damages; and the liquidated damages provision herein is uncontested.

Equally inapplicable is *Ward v. AFLAC*, *supra*, 444 F.Supp.2d 540, 544-545, where the language of the settlement agreement did not specify that the payment was not subject to withholding taxes and did not forbid the filing of the one Form 1099 complained of. Here, however, Nierenhausen does not deny some tax liability or complain of the issuance of the agreed upon Form 1099. Her complaint concerns the issuance of two Form 1099's, because the settlement agreement specifically referred only to "a 1099" to be issued to Nierenhausen's law firm.

Accordingly, we find that at the time of the settlement agreement May Co. was only required by law to issue one Form 1099, and the settlement agreement properly required that the Form 1099 be issued to Nierenhausen's law firm, which received the funds.

III. May Co. breached the express terms of the settlement agreement.

A. Principles of contract interpretation

"The purpose of the law of contracts is to protect the reasonable expectations of the parties." (*Ben-Zvi v. Edmar Co.* (1995) 40 Cal.App.4th 468, 475.) "The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the 'mutual intention' of the parties. 'Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. (Civ. Code, § 1636.) Such intent is to be inferred, if possible, solely from the written provisions of the contract. ([Civ. Code], § 1639.) The "clear and explicit" meaning of these provisions, interpreted in their "ordinary and popular sense," . . . controls judicial interpretation. ([Civ. Code], § 1638.)' [Citations.] . . . [L]anguage in a contract must be interpreted as a whole, and in the circumstances of

the case, and cannot be found to be ambiguous in the abstract. [Citation.] Courts will not strain to create an ambiguity where none exists. [Citation.]" (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18-19.)

The interpretation of a contract "must be fair and reasonable, not leading to absurd conclusions." (*Transamerica Ins. Co. v. Sayble* (1987) 193 Cal.App.3d 1562, 1566.) "A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties." (Civ. Code, § 1643.)

"'When a dispute arises over the meaning of contract language, the first question to be decided is whether the language is "reasonably susceptible" to the interpretation urged by the party. If it is not, the case is over. [Citation.] If the court decides the language is reasonably susceptible to the interpretation urged, the court moves to the second question: what did the parties intend the language to mean?'" (*Oceanside 84, Ltd. v. Fidelity Federal Bank* (1997) 56 Cal.App.4th 1441, 1448.) "In interpreting an unambiguous contractual provision we are bound to give effect to the plain and ordinary meaning of the language used by the parties." (*Coast Plaza Doctors Hospital v. Blue Cross of California* (2000) 83 Cal.App.4th 677, 684; see Civ. Code, § 1644.)

Thus, where "'contract language is clear and explicit and does not lead to absurd results, we ascertain intent from the written terms and go no further.'" (*Shaw v. Regents of University of California* (1997) 58 Cal.App.4th 44, 53.) "If the contract is capable of more than one reasonable interpretation, it is ambiguous [citations], and it is the court's task to determine the ultimate construction to be placed on the ambiguous language by applying the standard rules of interpretation in order to give effect to the mutual intention of the parties [citation]." (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 798.) However, the "mere fact that a word or phrase in a [contract] may have multiple meanings does not create an ambiguity." (*Palmer v. Truck Ins. Exchange* (1999) 21 Cal.4th 1109, 1118.)

B. *Extrinsic evidence*

In the present case, the trial court found nothing ambiguous in the settlement agreement and thus precluded May Co. from introducing extrinsic evidence to eliminate any ambiguity. May Co.'s offer of proof was that its trial counsel, who was present at the mediation, was prepared to testify that Nierenhausen's attorney had specifically requested that the agreement contain a provision that he would receive a Form 1099, and that May Co.'s counsel agreed to that provision but stated that Nierenhausen would nonetheless still receive a Form 1099 at the end of the tax year. The trial court refused to allow such testimony, ruling that parole evidence would not be allowed on the issue of the intent of the parties.

May Co. contends that precluding such parole evidence was error because the court improperly relied on "non-existent 'evidence' of Nierenhausen's subjective intent and its assumption the May Co. had drafted the agreement." According to May Co., if the settlement agreement was ambiguous, the evidence proffered by May Co. regarding negotiations during mediation should also have been admitted.[5]

We agree with the trial court and find no ambiguity in the language of the settlement agreement. To the extent the trial court went beyond the four corners of the language in the agreement and relied upon extrinsic evidence, it is not determinative as to our analysis.[6] It is well settled that an appellate court may affirm a trial court judgment

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[5] We note that all communications, negotiations, or settlement discussions by and between participants in the course of mediation are generally inadmissible. (Evid. Code § 1119.)

[6] Nierenhausen notes that the trial court took judicial notice of the entire file in this matter, which included the pleadings associated with May Co.'s motion for summary judgment and the declaration by Nierenhausen's counsel's in opposition to the motion.

Nierenhausen's counsel asserts that the agreement was not achieved until Nierenhausen agreed to reduce her settlement demand to an amount acceptable by May Co., in exchange for May Co.'s agreement to make the settlement check payable to the trust account of Nierenhausen's counsel, and accordingly, to provide Nierenhausen's

on any proper basis presented by the record, whether or not relied upon by the trial court. Ultimately, we review not the reasoning of the trial court, but rather the judgment rendered. (*ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1268.)

C. *De novo review and interpretation of the language and intent of the parties*

There is no factual dispute as to the language in the agreement and, as previously discussed, no need to resort to extrinsic evidence. Thus, whether there was a breach of the agreement turns on contract interpretation, which is a question of law and subject to independent, de novo review on appeal. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 866; *Coast Plaza Doctors Hospital v. Blue Cross of California*, *supra*, 83 Cal.App.4th at p. 684.)

The settlement agreement at issue included an integration clause: "This Agreement sets forth the entire agreement between the parties hereto, and fully supercedes any and all prior agreements or understandings, written or oral, between the parties hereto pertaining to the subject matter hereof." The agreement also specified that it "shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the parties hereto."

The second paragraph of the settlement agreement required that the settlement proceeds would be paid to the trust account of the law offices of Nierenhausen's counsel, that the proceeds would be "subject to a 1099," and that Nierenhausen's counsel would "receive a 1099" for the proceeds at the end of the taxable year. Quite simply, the unambiguous language of the agreement demonstrates that the parties only contemplated

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counsel with the 1099 for the settlement proceeds. The declaration by Nierenhausen's counsel also specifically asserted that "[h]ad May Co. not agreed to the above provisions, I would not have recommended [Nierenhausen] to have settled the case for the amount reflected in the Agreement, and the case would have either settled for a higher amount, or have failed to conclude at mediation." Nierenhausen's counsel urges that this information was admissible because "[a] contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates." (Civ. Code, § 1647.)

the issuance of a single Form 1099, and that the Form 1099 would be issued to Nierenhausen's counsel.

Contrary to May Co.'s assertion, it is of no consequence that the settlement agreement also contained an acknowledgement that May Co. made no representations regarding the tax consequences for Nierenhausen and that she agreed to pay all federal and states taxes required by law. Nierenhausen does not seek to rely on any taxation representations made by May Co., and she does not seek to avoid paying any taxes required by law.

May Co. also urges since that the settlement agreement did not specifically prohibit it from issuing a Form 1099 directly to Nierenhausen, it thus could do so. However, such a narrow and restrictive view is inconsistent with other provisions in the settlement agreement indicating it was intended to "settle fully and finally all" issues between the parties and to be "interpreted in accordance with the plain meaning of its terms and not strictly . . . against any of the parties." Also, in accordance with well established rules of contract interpretation, we construe the language as a whole, reasonably and in its context, to conclude that the intent of the parties was to fully address the matter of the Form 1099 and to provide that Nierenhausen's counsel would receive the one and only Form 1099 that May Co. would issue.

IV. May Co.'s remaining contentions are also without merit.

In a related contention May Co. asserts that any interpretation that it breached the agreement by filing a tax report is against the law and public policy. We acknowledge, of course, that a contract provision that requires violation of the law is not enforceable (Civ. Code, § 1511, subd. 1; see *Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104, 1111), and that contracts between parties must adhere to tax laws (see *Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 459, 461). However, as previously discussed, when the parties signed the settlement agreement and when May Co. subsequently issued the Form 1099's, the tax law *at that time* did not require issuing two Form 1099's. Since May Co. would not have violated tax law as it existed at the time,

the filing of the tax report in the manner required by the settlement agreement did not violate public policy.

Finally, Nierenhausen's breach of contract action is not barred by the Anti-Injunction Act (26 U.S.C. § 7421). The Anti-Injunction Act provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." (26 U.S.C. § 7421(a).) The purpose of this act is to "'permit the United States to assess and collect taxes alleged to be due without judicial intervention.'" (*Chandler v. Perini Power Constructors, Inc.* (D.N.H. 1981) 520 F.Supp. 1152, 1155.) Nierenhausen's action, however, does not challenge the right or ability of the federal government to assess and collect taxes.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS.

BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.